

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the Union Pacific Railroad Company to construct an Industrial Drill Track across Levin Avenue, a public street in the City of Tulare, County of Tulare.

Application 01-09-029
(Filed September 17, 2001)

O P I N I O N**Summary**

Union Pacific Railroad Company (UP) requests authority to construct an Industrial Drill Track extension across Levin Avenue in the City of Tulare (City), County of Tulare. The track extension will serve the new United States Cold Storage facility.

Discussion

United States Cold Storage proposes to construct cold storage facilities at the Tulare Industrial Park in Tulare, Tulare County. Phase One construction consists of an approximately 158,750 square feet warehouse. Future phases would provide an additional 281,582 square feet of cold storage warehouse, totaling 440,332 square feet. The cold storage facility will generate new job opportunities in the City. The UP Industrial Drill Track extension will provide freight rail service to the proposed cold storage facility. It is estimated that the facility will generate two train-trip movements per day across Levin Avenue.

The existing Levin Avenue is an east-west roadway within Tulare Industrial Park bounded by Blackstone Boulevard to the east and 'K' Street to the west. The existing average daily traffic (ADT) at Levin Avenue is about 1,500 vehicles per day. The vehicle trips generated by the proposed storage facility will not increase traffic on Levin Avenue as vehicles will access the facility via Walnut Avenue, just north of Levin Avenue.

City is the lead agency for this project under the California Environmental Quality Act of 1970 (CEQA), as amended, Public Resources (PR) Code Section 21000 et seq. City prepared a Negative Declaration in which the City's Environmental Impact Review Committee determined that the project will have no significant effect on the environment and is exempt from the requirements of an Environmental Impact Report.

On January 12, 2001, a Notice of Determination was filed with the State Secretary of Resources – Office of Planning and Research. City found that (1) the project will not have a significant impact on the environment, (2) a Negative Declaration was prepared for this project pursuant to the provisions of CEQA, (3) mitigation measures were not made a condition of approval of the project, and (4) a Statement of Overriding Consideration was not adopted for this project.

The Commission is a responsible agency for this project under CEQA. CEQA requires that the Commission consider that portion of the environmental consequences of a project within its area of expertise that is subject to its discretionary approval. In particular, to comply with CEQA, a responsible agency must consider the lead agency's EIR or Negative Declaration prior to acting upon or approving the project (CEQA Guideline Section 15050 (b)). The

specific activities that must be conducted by a responsible agency are contained in CEQA Guideline Section 15096.

The Commission has reviewed the environmental documentation prepared by the City. The City's Negative Declaration evaluated potential environmental impacts related to aesthetics, agriculture, air quality, biological resources, cultural resources, geology and soils hazardous materials, hydrology, transportation and traffic, population and housing, land use, recreation and public services. With respect to each potential impact area, the City determined that there was either no impact or a less-than-significant impact.

We are not aware of any information to suggest that the City's environmental review and conclusions are not adequate. Accordingly, we will adopt the City's finding that the project will not have a significant effect on the environment.

The Commission staff has considered crossing safety issues associated with (1) auto/train and pedestrian/train conflicts at the proposed railroad crossing, (2) general traffic circulation pattern, and (3) traffic capacity and emergency vehicle access. As a result of staff's concerns as raised to the City and UP, the crossing will be protected by two Standard No. 9-A automatic flashing lights signals with gate and cantilever arm (Commission General Order (G. O.) 75-C). Railroad advanced warning signs and pavement markings shall be installed in accordance with California Department of Transportation Traffic Manual.

The site of the project has been inspected by the Commission's Rail Safety and Carrier Division — Rail Crossings Engineering Section staff. Staff examined

the need for and the safety of the grade crossing and recommends that the application be approved.

The application was found to be in compliance under the Commission's filing requirements, including Rule 38 of the Rules of Practice and Procedure, which relates to the construction of a public road, highway, or street across a railroad. A site map of the grade crossings is as shown on plans attached to the application and Appendix A.

In Resolution ALJ 176-3072, dated October 2, 2001, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. Since no hearings were held, this preliminary determination remains accurate. The Commission's Rail Safety and Carriers Division recommends that this application be granted. Given these developments, public hearing is not necessary, and it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3072.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311 (g)(2), the otherwise applicable 30-day effective period for public review and comment is being waived.

Findings of Fact

1. Notice of the application was published in the Commission Daily Calendar on September 28, 2001. No protests have been received. A public hearing is not necessary.

2. UP requests authority, under Public Utilities Code Sections 1201-1205, to construct an Industrial Drill Track extension across Levin Avenue in Tulare, Tulare County.

3. The Levin Avenue crossing will serve public need by providing a safe access route across railroad track within the Tulare Industrial Park.

4. Public convenience and necessity require the construction Levin Avenue crossing.

5. Public safety requires that the Levin Avenue crossing be protected by two Standard No. 9-A automatic flashing lights signals with gate and cantilever arm (G. O. 75-C)), one east of the track (northeast corner) and one on the west side (southwest corner).

6. City is the lead agency for this project under CEQA, as amended. City prepared a Negative Declaration in which the City's Environmental Impact Review Committee determined that the project will have no significant effect on the environment and is exempt from the requirements of an Environmental Impact Report. On January 12, 2001, a Notice of Determination was filed with the State Secretary of Resources – Office of Planning and Research. City found that (1) the project will not have a significant impact on the environment, (2) a Negative Declaration was prepared for this project pursuant to the provisions of CEQA, (3) mitigation measures were not made a condition of approval of the project, and (4) a Statement of Overriding Consideration was not adopted for this project.

7. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's Negative Declaration and Notice of Determination.

8. We adopt the City's finding under CEQA that the project will not have a significant effect on the environment.

Conclusions of Law

1. This order should be made effective immediately as UP wishes to commence construction of the project at the earliest possible date.
2. The application should be granted as set forth in the following order.

O R D E R

IT IS ORDERED that:

1. Union Pacific Railroad Company (UP) is authorized to construct an Industrial Drill Track extension across Levin Avenue, to be identified as Crossing No. B-252.5-C in Tulare, Tulare County.
2. Clearances shall be in accordance with General Order (G.O.) 26-D. Walkways shall conform to G.O. 118.
3. Protection at the Levin Avenue crossing shall be two Standard No. 9-A automatic flashing light signals with gate and cantilever arm (G. O. 75-C), one east of the tracks (northeast corner) and one on the west side (southwest corner).
4. Construction and maintenance of the crossings shall be in accordance with the provisions of G.O. 72-B.
5. Construction and maintenance costs shall be borne by applicant in accordance with Section 1202.2 of the Public Utilities Code.

6. Within 30 days after completion of the work under this order, UP shall notify the Commission in writing that the authorized work was completed.

7. This authorization shall expire if not exercised within two years unless time is extended or if the above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

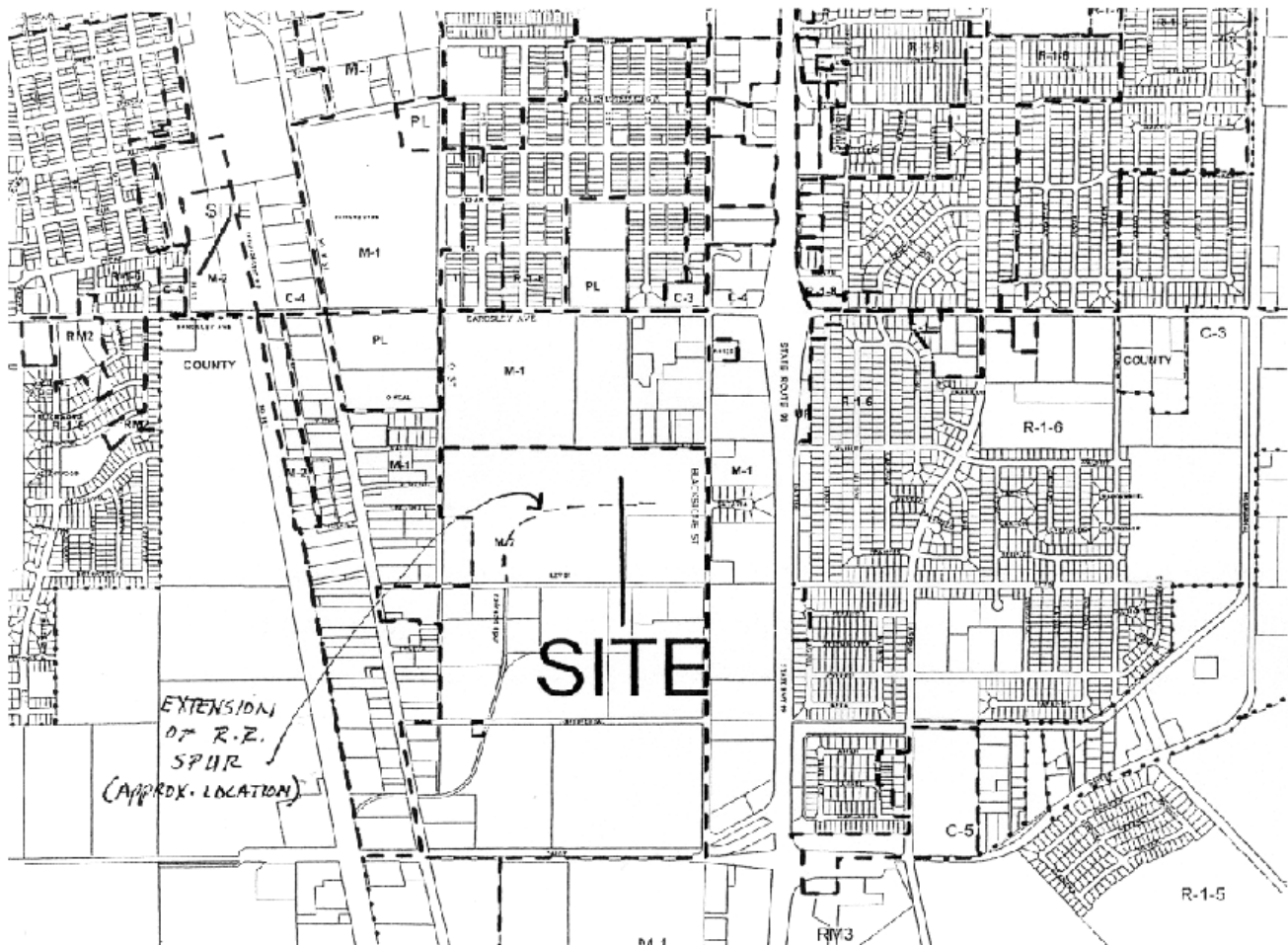
8. The application is granted as set forth above.

9. Application 01-09-029 is closed.

This order is effective today.

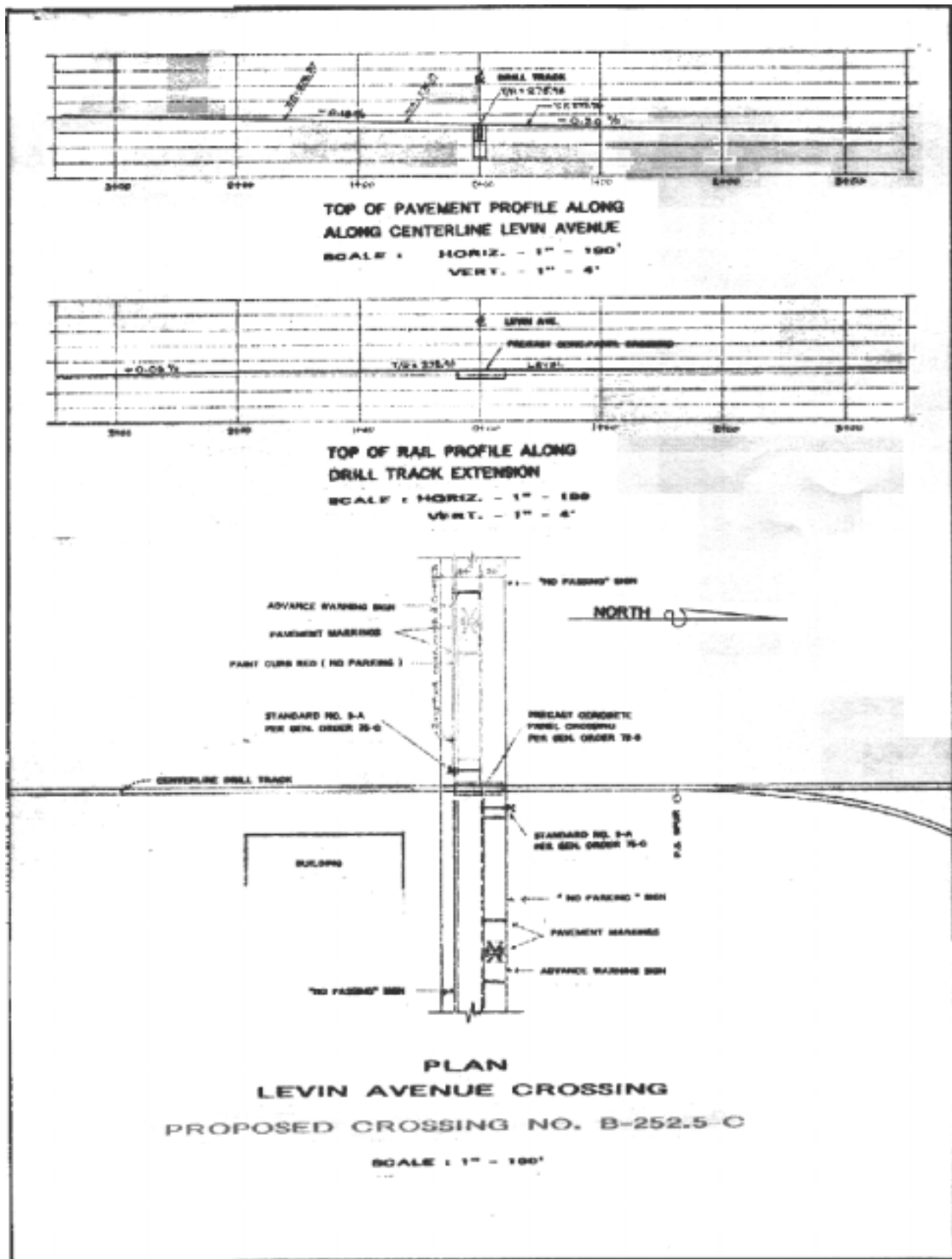
Dated _____, at San Francisco, California.

City of Tulare



U.S. Cold Storage facility
 Phase 158,750 sq.ft.
 total build out: 599,082 sq. ft.
 25 acres
 Southwest cor of Blackstone St and Walnut Ave





(End of Appendix A)

